IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 271 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
M/S. ARUNODAYA MILLS LTD. - Opponent(s)

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Appearance :
MRS. MONA BHATT for MR. MANISH R. BHATT for Applicant(s).
NONE for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/08/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The Income-Tax Appellate Tribunal, Ahmedabad

Bench “B”, at the instance of the Revenue, has referred the following question for the opinion of this Court:

> *“Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in law in holding that the expenditure of Rs.12,86,711=00 in Assessment Year 1984-85 and Rs.13,13,975=00 in Assessment Year 1985-86 incurred on payment of commission on sales cannot be treated as sales promotion expenses, and, therefore, cannot be taken into account while computing the disallowance u/s. 37(3A) of the I.T. Act. 1961.”*

2. The short facts necessary for disposal of the present case are that the assessee is a limited company engaged in manufacture and sale of yarns, etc. In the Assessment Year 1984-85, the Assessing Officer disallowed Rs.3,35,000/- under Section-37(3A) of the Income Tax Act. The details of the working is given in paragraph-7 of the Reference. From the Reference, it would clearly appear that major part of the aggregate which was taken for determination of the disallowance was sales commission amounting to Rs.12,86,711=00. The submission of the Assessee, all through, was that the aforesaid amount

should not have been taken into aggregate for computing the disallowance under Section-37(3A) of the Income Tax Act for it was not an expenditure falling within the mischief of sales promotion. The submission did not find favour with the Assessing Officer and as the appeal was allowed, the Revenue took up the matter before the Tribunal. The Commissioner of Income Tax (Appeals) held that the sales commission could not be aggregated for the purpose of working of the disallowance under Section-37(3A). The Tribunal, relying upon the judgement of the Calcutta High Court in the case of ***CIT vs. Bata India Limited,*** [***201 ITR 884***], confirmed the findings of the Commissioner of Income Tax (Appeals). The Tribunal held that the sales commission paid to the various agents was normal trade practice and as such, could not be brought within the definition of the sales promotion, as defined under Section-37(3B) of the Income Tax Act.

3. After hearing the learned Counsel for the Revenue, we are of the opinion that the sales commission, which is given to various sales representatives or the dealers, would not come within the definition or mischief of sales promotion, but, would altogether be different because sales promotion is altogether a different connotation for the purposes of the Income Tax Act. In

our opinion, the Commissioner of Income Tax (Appeals) was justified in reversing the disallowance and the Tribunal was justified in dismissing the appeal. The question is answered against the interest of the Revenue. The Reference stands disposed of. No costs.

[***R.S.Garg, J.***]

[***M. R. Shah, J.***]

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